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## 10.03 MAJOR DISTRICT CLASSIFICATIONS

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Pursuant to the provisions of 12 M.R.S.A. §685-A(1), the Commission will classify areas within its jurisdiction into one of the following three major districts:

- “A.     **Protection districts:** Areas where development would jeopardize significant natural, recreational and historic resources, including, but not limited to, flood plains, precipitous slopes, wildlife habitat and other areas critical to the ecology of the region or State;
- B.     **Management districts:** Areas that are appropriate for commercial forest product or agricultural uses or for the extraction of nonmetallic minerals and for which plans for additional development are not presently formulated nor development anticipated; and
- C.     **Development districts:** Areas discernible as having patterns of intensive residential, recreational, commercial or industrial use or commercial removal of metallic minerals, and areas appropriate for designation as development districts when measured against the purpose, intent and provisions of this chapter.” 12 M.R.S.A. §685-A(1).

Pursuant to the Commission's Comprehensive Land Use Plan, the above major districts are divided into various subdistricts. The definition, purpose, and activities regulated within each of the subdistricts are provided in Sub-Chapter II.

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## 10.04 OFFICIAL LAND USE GUIDANCE MAPS

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The initial boundaries of the various subdistricts shall be shown on the Official Land Use Guidance Maps filed in the office of the Commission, which maps, and all amendments thereto, are incorporated by reference in these regulations.

The maps shall be the official record of the zoned status of all areas within the Commission's jurisdiction. Official Land Use Guidance Maps shall be identified as follows:

"This Land Use Guidance Map was adopted by the Maine Land Use Regulation Commission on \_\_\_\_\_, and became effective on \_\_\_\_\_.

This map is certified to be a true and correct copy of the Official Land Use Guidance Map of the Maine Land Use Regulation Commission.

By: \_\_\_\_\_”  
                     Director, Maine Land Use Regulation Commission

Copies of such maps, and all amendments thereto, certified by a member of the Commission or the Director thereof shall be filed with the State Tax Assessor and with the several Registers of Deeds in the counties wherein the lands depicted on such maps are located.

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## 10.05 INTERPRETATION OF DISTRICT BOUNDARIES

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Whenever uncertainty exists as to the boundaries of subdistricts as shown on the Official Land Use Guidance Map, the provisions of 12 M.R.S.A. §685-A(2) shall apply.

In addition, in cases where two (2) or more major districts (protection, management or development) apparently apply to a single land area, the Commission will designate the land area for inclusion in that major district which best achieves the legislative purpose and intent as set forth in 12 M.R.S.A. §681 and §685-A(1).

Except as otherwise provided, a subdistrict designation appearing on the official Land Use Guidance Maps applies throughout the whole area bounded by such subdistrict boundary lines.

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## 10.06 INTERPRETATION OF LAND USE STANDARDS

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The following shall apply to all uses in all subdistricts except as otherwise provided:

- A. The description of permitted uses herein does not authorize any person to unlawfully trespass, infringe upon or injure the property of another, and does not relieve any person of the necessity of complying with other applicable laws and regulations.
- B. Unless otherwise specified herein, accessory uses and structures which are permitted in a subdistrict must conform to the requirements for the principal use or structure to which they relate.
- C. Where two or more protection subdistricts apply to a single land area, the combination of the more protective standards for each subdistrict shall apply. Where another protection subdistrict applies to the same land area as a P-FW subdistrict, any activities within such area which are not in conformance with the applicable standards of Section 10.27 shall require a permit.
- D. Wherever an M-NC subdistrict surrounds another management or protection subdistrict, no commercial, industrial, or residential development shall be allowed in such management or protection subdistricts except as allowed in such M-NC subdistrict.
- E. Notwithstanding any other provisions contained in this chapter, a “land use standard may not deprive an owner or lessee or subsequent owner or lessee of any interest in real estate of the use to which it is lawfully devoted at the time of adoption of that standard.” 12 M.R.S.A. §685-A(5).
- F. Subdivisions are prohibited unless allowed with a permit pursuant to the standards set forth for the subdistrict involved, except as provided in Section 10.25,Q,5.
- G. “A permit is not required for those aspects of a project approved by the Department of Environmental Protection under Title 38 if the commission determines that the project is an allowed use within the subdistrict or subdistricts for which it is proposed. Notice of intent to develop and a map indicating the location of the proposed development must be filed with the commission prior to or concurrently with submission of a development application to the Department of Environmental Protection.” 12 M.R.S.A. §685-B(1)(B).

- H. If a proposed activity other than timber harvesting requires a permit and will alter 15,000 or more square feet of a mapped wetland (P-WL1, P-WL2, or P-WL3 subdistrict), or 1 acre or more of overall land area, the applicant must delineate on the ground and in a site plan all wetlands within the general project area using methods described in the “Corps of Engineers Wetlands Delineation Manual” (1987).
- I. The size of a mineral extraction operation is determined by adding the reclaimed and unreclaimed acreages. While a single mineral extraction operation may be located in multiple subdistricts, mineral extraction operations 30 contiguous acres or greater in size must be located in a D-CI subdistrict.

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## 10.07 EXEMPTIONS

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Notwithstanding any other provisions contained in this chapter:

- A. Normal maintenance and repair, or renovations of any lawfully existing structure or use do not require a permit from the Commission.
- B. Utility relocations within the right-of-way of any roadway made necessary by road construction activity do not require a permit from the Commission.
- C. "Real estate used or to be used by a public service corporation may be wholly or partially exempted from regulation to the extent that the Commission may not prohibit such use but may impose terms and conditions for use consistent with the purpose of this chapter, when, upon timely petition to the Public Utilities Commission and after a hearing, the said Commission determines that such exemption is necessary or desirable for the public welfare or convenience." 12 M.R.S.A. §685-A(11).
- D. Capacity expansions of utility facilities do not require a permit from the Commission.
- E. Archaeological excavation adjacent to a body of standing water, flowing water, freshwater wetland, coastal wetland, or sand dune system does not require a permit from the Commission as long as the excavation is conducted by an archaeologist listed on the Maine Historic Preservation Commission level 1 or level 2 approved list, and that unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures.
- F. Public utility facilities located within a public right-of-way do not require a permit from the Commission. 35-A M.R.S.A. §2503(20)

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## 10.08 CRITERIA FOR ADOPTION OR AMENDMENT OF LAND USE DISTRICT BOUNDARIES

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### A. GENERAL CRITERIA

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“A land use district boundary may not be adopted or amended unless there is substantial evidence that:

1. The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of this chapter; and
  2. The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.” 12 M.R.S.A. §685-A(8-A).
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### B. AREAS ADJACENT TO LAKES

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The review standards listed in Section 10.25,A must be considered in applying the above criteria to proposed changes in subdistrict boundaries adjacent to lakes.

### C. PROSPECTIVELY ZONED AREAS

#### 1. Additional Approval Criteria:

In addition to meeting the requirements of Section 10.08,A,1 and 2 above, for areas that have been prospectively zoned by the Commission, a petition for amendment to a development district boundary shall not be approved unless the petitioner demonstrates that:

- a. the requested change is needed due to circumstances that did not exist or were not anticipated during the prospective zoning process;
- b. the new development subdistrict is either contiguous to existing development subdistricts or within areas that are suitable as new growth centers; and
- c. the change will better achieve the goals and policies of the Comprehensive Land Use Plan, including any associated prospective zoning plans.

#### 2. List of plantations and townships that have been prospectively zoned by the Commission:

- |  |   |
|--|---|
| - Adamstown Township, Oxford County    | - Richardsontown Township, Oxford County  |
| - Dallas Plantation, Franklin County   | - Sandy River Plantation, Franklin County |
| - Lincoln Plantation, Oxford County    | - Township C, Oxford County               |
| - Magalloway Plantation, Oxford County | - Township D, Franklin County             |
| - Rangeley Plantation, Franklin County | - Township E, Franklin County             |

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## 10.09 CRITERIA FOR AMENDMENT OF LAND USE STANDARDS

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Adoption or amendment of land use standards may not be approved unless there is substantial evidence that the proposed land use standards would serve the purpose, intent and provisions of 12 M.R.S.A. §206-A, and would be consistent with the Comprehensive Land Use Plan.

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## 10.10 VARIANCES

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The Commission may grant variances pursuant to 12 M.R.S.A. §685-A(10) and adopts this section to interpret and implement the statutory provision.

### A. PETITIONS

Any property owner or lessee may petition the Commission for permission to develop the property in a manner otherwise prohibited by the Commission's rules. Variances may be granted only from dimensional requirements, but shall not be granted for establishment of uses otherwise prohibited by the Commission's rules.

### B. GRANTING OF A VARIANCE

The Commission may grant a variance when the Commission finds that the proposed development is in keeping with the general spirit and intent of this chapter, that the public interest is otherwise protected and that strict compliance with the rules and standards adopted by this Commission would cause unusual hardship or extraordinary difficulties because of the following:

1. The access and use needs of a person with a physical disability as defined in 5 M.R.S.A. §4553 sub-§7-B who resides in or regularly uses a structure; this provision shall be applicable only under the following circumstances:
  - a. Where necessary for the use of residential structures; or
  - b. An alternate proposal approvable under either the provisions of Sub-Chapter III or Section 10.11 would not provide a reasonable accommodation to the disability;
  - c. The variance requested is necessary to afford relief;
  - d. The hardship is not the result of action taken by the petitioner; and
  - e. The Commission may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives on the property; or
2. Exceptional or unique conditions of topography, access, location, shape, size or other physical features of the site; or
3. Unusual circumstances that were not anticipated by the Commission at the time the rules and standards were adopted.

4. In order to be granted a variance, under either Section 10.10,B,2 or 3 above, a petitioner must demonstrate, by substantial evidence, that:
- a. The land in question can not yield a reasonable return unless a variance is granted;
  - b. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
  - c. The granting of a variance will not alter the essential character of the locality; and
  - d. The hardship is not the result of action taken by the petitioner or a prior owner or lessee.
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## **C. ISSUANCE**

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The Commission may issue a variance only after making written findings of fact and conclusions indicating that the petition, as modified by such terms and conditions as the Commission deems appropriate, has met the standards of Section 10.10,B. If the Commission denies the requested variance, it shall provide the petitioner with written explanation of the reasons for denial.

## 10.11 NONCONFORMING USES AND STRUCTURES

### A. PURPOSE AND SCOPE

This section governs structures, uses and lots that were created before the Commission's rules or laws were established, but which do not meet the current rules or laws. This section also governs structures, uses and lots that met the Commission's rules or laws when built or created, but no longer are in conformance due to subsequent revisions to those rules or laws.

In accordance with 12 M.R.S.A. §685-A(5), legally existing nonconforming structures, uses and lots will be allowed to continue. Renovations of these structures, and the construction of certain accessory buildings, are allowed without a permit. However, 12 M.R.S.A. §685-B(7) authorizes the Commission to regulate or prohibit extensions, enlargement, or movement of nonconforming uses and structures. This section clarifies which activities are allowed with a permit, without a permit, or are prohibited in the modification of a legally existing nonconforming structure, use or lot.

### B. GENERAL

1. **Criteria for Approval.** Permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in Section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. §685-B(4) and demonstrate that:
  - a. the project will not adversely affect surrounding uses and resources; and
  - b. there is no increase in the extent of nonconformance, except as provided in Section 10.11,B,9 or in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a water body setback.
2. **Extent of Nonconformance with Respect to Setbacks.** Section 10.26,D of these rules establishes minimum setbacks from water bodies, roads and property boundaries. Where legally existing, nonconforming structures do not meet these setbacks, an existing setback line will be established. The existing setback line will run parallel to the water body, road or property boundary at a distance equal to the closest point of the existing structure (including attached decks or porches) to the feature from which the setback is established. This is shown graphically below in Figure 10.11,B-1.

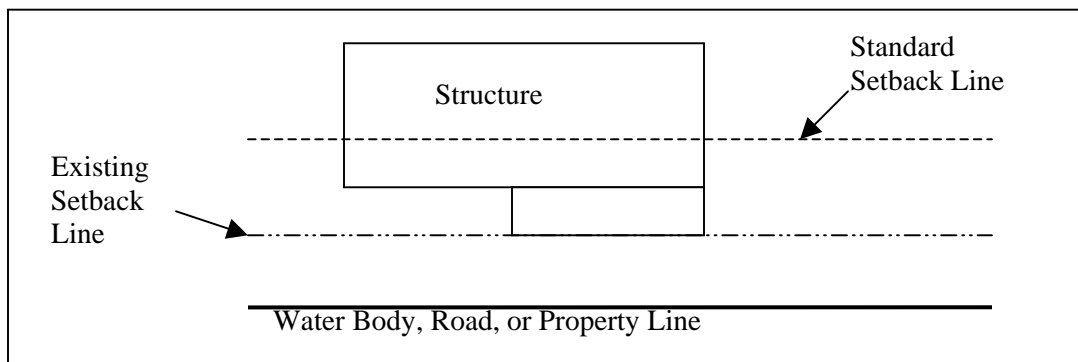


Figure 10.11,B-1. Determination of setback

Subject to the other requirements in this section, a nonconforming structure may be expanded up to the existing setback line without being considered to be more nonconforming than the original structure. Expansions between the existing setback line and the water body, road or property boundary will be considered to increase nonconformity, and will not be allowed, except as provided in Section 10.11,B,9.

3. **Transfer of Ownership.** Legally existing, nonconforming structures, uses, and lots may be transferred, and the new owner may continue the nonconforming use or continue to use the nonconforming lot or structure as before, subject to the provisions of the Commission's rules.
4. **Normal Maintenance and Repair.** A permit is not required for the normal maintenance and repair of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots.
5. **Renovation.** A permit is not required for the renovation of legally existing nonconforming structures, structures associated with nonconforming uses, or structures on nonconforming lots.
6. **Waiver of Road Setbacks.** To allow a structure to become either conforming or less nonconforming to the water body setback, the Commission may reduce the road setback to no less than 20 feet in cases of reconstruction or relocation of legally existing structures or construction of new accessory structures on developed, legally existing nonconforming lots.
7. **Conformance with Maine Subsurface Waste Water Disposal Rules.** All changes to legally existing nonconforming structures, structures for nonconforming uses or structures on nonconforming lots must comply with the Maine State Subsurface Waste Water Disposal Rules (144A CMR 241), including changes that do not require a permit under this rule.
8. **Conflicting Requirements.** In cases where two or more provisions of this section apply to a particular structure, use or lot, the more restrictive provision shall control.
9. **Waiver of Property Line Setbacks.** The Commission may reduce the property line setback where there is no practical alternative and upon prior written agreement of the adjoining property owner.

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## C. NONCONFORMING STRUCTURES

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1. **Expansion.** A permit is required for the expansion of a nonconforming structure. In addition to meeting permit requirements, expansions must also comply with the following limitations. These limitations do not apply to water dependent uses as defined in Section 10.02.
  - a. **Certain Expansions Prohibited.** If any portion of a structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, expansion of that portion of the structure is prohibited. That portion beyond 25 feet may be expanded provided the size limitations in Section 10.11,C,1,b are met.

- b. **Size of Structures Near Water Bodies Limited.** The maximum size of expansions of nonconforming structures is limited within areas described by either of the categories below:

- (1) The area within 100 feet, horizontal distance, of the normal high water mark of bodies of standing water 10 acres or greater in size or flowing waters draining 50 square miles or more.
- (2) The area within 75 feet, horizontal distance, of the normal high water mark of tidal waters or bodies of standing water less than 10 acres in size (but excluding bodies of standing water less than three acres in size not fed or drained by a flowing water).

Legally existing, principal and accessory structures located within these areas may be expanded subject to the other requirements of this section, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater. The maximum combined footprint for all structures within these areas may not exceed the limits in Table 10.11,C-1.

<b>Closest Distance of Expansion from Water Body</b>	<b>Maximum Combined Footprint for all Structures not Meeting Water Body Setbacks</b>
Greater than 25 and less than 50 feet.	750 square feet.
Between 50 and 75 feet.	1,000 square feet.
Greater than 75 and less than 100 feet (if applicable setback is more than 75 feet).	1,500 square feet.

Table 10.11,C-1. Limitations on size of structures near water bodies.

2. **Reconstruction or Replacement.** A legally existing, nonconforming structure may be reconstructed or replaced with a permit, provided that the permit application is completed and filed within two years of the date of damage, destruction or removal, and provided that the structure was in regular active use within a two year period immediately preceding the damage, destruction, or removal.

- a. **Meeting Setbacks to the Greatest Extent Possible.** Reconstruction or replacement must comply with current minimum setback requirements to the greatest possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the greatest possible extent, the Commission may consider the following factors:

- size of lot,
- slope of the land,
- potential for soil erosion and phosphorus export to a water body,
- location of other legally existing structures on the property,
- location of the septic system and other on-site soils suitable for septic systems,
- type and amount of vegetation to be removed to accomplish the relocation, and
- physical condition and type of existing foundation, if any.

- b. **Reconstruction of Attached Decks.** Decks attached to a legally existing, nonconforming structure may be reconstructed in place with a permit, except that replacement of any portion of a deck that extends into or over the normal high water mark is prohibited.
  - c. **Permanent Foundations.** The addition of a permanent foundation beneath a legally existing, nonconforming structure constitutes a reconstruction subject to the provisions in Section 10.11,C,2,a.
  - d. **Boathouses.** Except in a D-MT subdistrict, boathouses shall not be reconstructed or replaced. Normal maintenance and repair, and renovation of a legally existing boathouse is allowed without a permit.
  - e. **Sporting Camps.** A legally existing, nonconforming structure within a commercial sporting camp may be reconstructed in place, provided that the reconstruction occurs within 2 years of damage, destruction or removal and the Commission issues a permit [see 12 M.R.S.A. §685-B(7-A)]. The Commission may, consistent with public health, safety and welfare, waive standards that made the original structure nonconforming. The reconstructed structure must replicate the original structure and use to the maximum extent possible and it must be in the same location and within the same footprint as the original structure. Minor modifications to dimensions may be allowed provided the total square footage of the structure is not increased.
- 3. **Relocation.** In order to make it conforming or less nonconforming, a legally existing, nonconforming structure may be relocated within the boundaries of the lot upon the issuance of a permit. Cleared openings created as part of a relocation shall be stabilized and revegetated. Relocated structures that are altered such that they meet the definition of reconstruction shall meet the requirements of Section 10.11,C,2.
  - 4. **Change of Use of a Nonconforming Structure.** The use of a nonconforming structure shall not be changed without permit approval.
  - 5. **New, Detached Accessory Structures.** New, detached accessory structures associated with pre-1971 residences and operating farms are allowed without a permit if they meet all setbacks, do not cause lot coverage requirements to be exceeded and otherwise conform with the Commission's rules. Permits are required for all other new detached accessory structures.

The construction of new, detached accessory structures that do not meet water body setbacks is allowed with a permit only if the structure cannot be physically sited on the lot to meet the water body setback requirement. In this case, the new accessory structure shall not be located closer to the normal high water mark than the principal structure, shall not be located within 25 feet of the normal high water mark, and shall be of a size and height that, when combined with legally existing principal buildings will not exceed the size and height requirements of Section 10.11,C,1,b.

- 6. **Enclosure of Decks and Porches.** A permit is required for the complete or partial enclosure of decks and porches. Enclosure of decks and porches is not an expansion of floor area. The enclosure of the structure which results in additional stories is considered an expansion and must meet the provisions of Section 10.11,C,1,b. If any portion of the structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, complete or partial enclosure of that portion of the structure is prohibited.

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**D. NONCONFORMING USES.**


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1. **Expansion of Use.** Extension, enlargement or expansion of nonconforming uses requires a permit.
  2. **Change in Use.** A nonconforming use may not be changed to another use without a permit.
  3. **Resumption of Use.** A nonconforming use shall not be resumed if it has been discontinued or abandoned for a period exceeding two years, or if it has been superseded by a conforming use.
  4. **Special Exceptions.** Any use granted a special exception permit shall be deemed a conforming use [see 12 M.R.S.A. §685-A(10)].
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**E. NONCONFORMING LOTS.**


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1. **Expansion of Structures.** Structures on nonconforming lots may not be expanded without a permit.
2. **Creation of Nonconforming Lots.** A lot which has an established use or structure to which dimensional standards apply may not be divided or altered in a manner that makes the lot, or any structure or use, nonconforming or more nonconforming.
3. **Pre-1971, Unimproved, Nonconforming Lots.** An unimproved, nonconforming lot, legally existing as of September 23, 1971, may not be developed unless the Commission grants a variance to those standards that make the lot nonconforming. However, if a lot is at least 20,000 square feet in size, has at least 100 feet of shore frontage, and is not a contiguous lot as described in Section 10.11,E,5 below, the Commission may allow for development by waiving, to the minimum extent necessary, the requirements that make the lot nonconforming. In this case a variance is not required. This waiver may only be granted if the proposed development would meet the shoreline setback requirements in Section 10.26,D.
4. **Development of Other Nonconforming Lots.** When a lot was lawfully created after September 23, 1971, in conformity with LURC dimensional requirements applicable at the time, the Commission may waive, to the minimum extent necessary the current dimensional requirements. Waived setbacks shall not be reduced below those in effect at the time of creation of the lot.
5. **Contiguous Lots.** Two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements, except where:
  - a. such lots are part of a subdivision approved by the Commission, or
  - b. each lot has a legally existing dwelling unit that conformed to the Commission's rules at the time each lot was developed.

Under these two circumstances the lots may be conveyed separately or together.
6. **Expansion of Septic Systems.** The conversion from primitive to combined septic systems on legally created and developed lots is allowed without a permit provided authorization is obtained from the local plumbing inspector or from the Department of Human Services, Division of Health Engineering and provided there are no limitations on combined septic systems established by prior permit conditions.

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## **10.12 SEVERABILITY**

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The provisions of this chapter are severable. If a section, sentence, clause or phrase of this chapter is adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this chapter.

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## **10.13 EFFECTIVE DATE**

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The effective date of this chapter shall be, as to each particular area within the Commission's jurisdiction, the effective date of the zoning map for such particular area adopted pursuant to this chapter, except as otherwise provided by 12 M.R.S.A. §685-A(6).

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## **10.14 PENALTIES FOR VIOLATIONS**

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A person violating a provision of this chapter is subject to the provisions of 12 M.R.S.A. §685-C(8).

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## **10.15 APPEALS**

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The appeal of a decision of the Commission or Commission's staff must be taken in accordance with Chapter 4 of these rules and applicable statutes.

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## **10.16 NOTIFICATION FORMAT**

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Where a written notification is required by this chapter, such notification must be submitted in advance of the date on which the activity, which is the subject of the notification, is commenced. Except as provided in Section 10.27,L such notification must state the:

- A. Location of the proposed project by use of an official Commission Land Use Guidance Map of the area;
- B. Nature of the proposed project; and
- C. Time period of the proposed project;

Such notification must also state that the activity or project will be accomplished in conformance with the applicable minimum standards of Sub-Chapter III and must be signed by a duly authorized person who shall be responsible for the execution of the activity.

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## 10.17 EXPIRATION OF PERMIT

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If a development or use requiring a permit is not substantially started within the time period specified in the permit conditions of approval, or is not substantially completed within the time period specified, the permit lapses and further development or activity is prohibited thereafter unless and until a new permit is granted, or the Commission otherwise specifically authorizes.

Except as otherwise authorized by the Commission, uses authorized under a permit must be substantially started within 2 years of the effective date of the permit and substantially completed within 5 years of the effective date of the permit; provided that, with respect to permits issued prior to July 1, 2003, that do not specify any expiration date, that date shall be October 1, 2004.

For the purpose of these rules, “substantial start” shall mean the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Also for the purpose of these rules, “substantial completion” shall mean completion of all permit conditions of approval.

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## 10.18 RESERVED

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## 10.19 RESERVED

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## 10.20 RESERVED

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